IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 1481 OF 2007

Khatib Imran Akhil Ahmed. ... Applicant.

V/s.

The State of Maharashtra. ... Respondent.

Mr S. V. Marwadi with Mr Ganesh Gole, Advocates for the applicant.

Mr R.B.Thakre with A.M.Chimalkar, Special Public Prosecutor for C.B.I. with U. V.Nikam, A.P.P. for the State.

CORAM: V.C.DAGA, J.

DATED: 20th Sept, 2007.

P.C.:
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1. Heard Mr. S. V. Marwadi with Mr Ganesh Gole, learned counsel for the applicant- accused and Mr. R.B.Thakre, appearing with Mr.A.M.Chimalkar, learned Special Public Prosecutor with Mr. U. V. Nikam, A.P.P. for the State.

2. Perused application and material on record.

3. The applicant is seeking bail under Section 439 of the Cr.P.C. read with Section 21 (4) of the Maharashtra Control of Organised Crime Act, 1999 ("the M.C.O.C.Act"for short) in Special Case No. 16 of 2006

registered under section 120-B of Indian Penal Code read with sections 4 and 5 of Explosive Substances Act read with sections 5, 6, 9(B) of Indian Explosive Act read with sections 3, 25 of Indian Arms Act read with sections 10, 13, 16, 18 and 23 of Unlawful Activities (Prevention) Act read with sections 3 (1)(ii), 3(2) and 3(4) of the M.C.O.C.Act, 1999.

THE FACTUAL MATRIX:-

4. The factual matrix, in short, is that on receipt of an intelligence information that some explosives and weapons were likely to be transported in a vehicle in Marathwada and Khandesh region, the team of Anti Terrorism Squad (Maharashtra), on 9th May, 2006, at 16.00 hours, intercepted one white colour Sumo motor jeep and signaled Tata Sumo Motor Jeep No. MH-14-X-4380 to halt at Yevala Junction. It is alleged that the driver of the said jeep did not stop and speeded away his vehicle. Therefore, it was chased and intercepted on Verul Aurangabad Road near Ghruneshwar Temple, Taluka Khultabad, District Aurangabad. It is further alleged that three occupants of the jeep got down and started running, one of the occupant of the jeep was apprehended on the

spot and jeep was detained. That the search of the jeep revealed that it was carrying ten cartoon boxes of computer cabinet servers. The jeep and apprehended accused were taken at Khultabad Police Station, District Aurangabad and search was carried out under panchnama. It is alleged that in the said cartoon 10 AK 47 rifles, 2000 live rounds, 40 magazines, 30 kgs of RDX, 10 pouches were found concealed. The jeep and the arms and ammunitions, explosives were taken charge under panchnama. In this regard, F.I.R. came to be registered at A.T.S.Mumbai.

5. It is alleged that during the course of further investigation, it revealed that there were several other persons involved and had conspired to revolt against the Country in the name of "Jihad". The applicant came to be arrested alongwith other accused persons who had allegedly conspired the said Jihad. Police had also seized one Tata Indica Car No.MH-20 U 1240 carrying similar consignment of weapons and explosives. Thus, in all the police had arrested 16 accused persons and 6 to 7 persons are wanted in the said case. The present applicant came to be arrested on 7.6.2006 and since then he is in custody.

6. That during the course of investigation,

confession statements of Accused Nos. 11 and 15 as well as Accused No. 17 came to be recorded. That after the completion of the investigation, charge-sheet as well as supplementary charge-sheet came to be filed in the said case. The application moved by the accused-applicant before the Special Judge under M.C.O.C.Act, Greater Bombay came to be rejected on 3.2.2007.

7. It is the case of the prosecution that the applicant- accused along with other 16 accused persons are facing charges under section 120-B of Indian Penal Code read with sections 4 and 5 of Explosive Substances Act read with sections 5, 6, 9(B) of Indian Explosive Act read with sections 3, 25 of Indian Arms Act read with sections 10, 13, 16, 18 and 23 of Unlawful Activities (Prevention) Act read with sections 3(1)(ii), 3(2) and 3(4) of the M.C.O.C.Act, 1999 as stated hereinabove.

8. The huge stock of fire arms and explosive substance were seized on 9th May, 2006 at Aurangabad. It contains 16 AK-47 rifles, 3200 live cartridges of AK-47 rifles, 62 magazines of AK-47 rifles, 16 magazine pouches, 43 kg. Of explosive substance and 50 hand grenades. The police, therefore, charge sheeted all these accused for number of offences under

the relevant sections referred to hereinabove and also for intention of promoting insurgency in the country by continuous unlawful activities under the M.C.O.C.Act.

9. Accused-applicant applied for bail before the Special Judge who by reasoned order dated 3.2.2007 was pleased to reject the same.

10. Being aggrieved and dissatisfied with the order dated 3.2.2007 referred hereinabove, the applicant has invoked the jurisdiction of this Court to seek bail.

SUBMISSIONS:

11. Mr Marwadi, learned counsel for the applicant submitted that the applicant is innocent and falsely implicated in the present case. That there is no direct or indirect material against him. That his name has neither been reflected in the F.I.R. nor any incriminating material was found against him. That the applicant has been implicated in the present case only because of passing reference made in the confessional statements of accused No.11 Syed. Akif Syed Jafruddin and accused no. 15 Abdul Samad

Shamsherkhan which according to the learned counsel did not impute any incriminating circumstance to the knowledge of the present applicant. That there is no material to corroborate alleged confessional statement to show complicity of the present applicant with the present C.R. That the record of telephonic conversation annexed to the charge sheet did not show that the applicant was having any knowledge or for that purpose had taken any active part in the alleged conspiracy. That the co-accused No.17 has already been released on bail though the confessional statement was made by him. The learned counsel,thus, submits that this is a fit case for grant of bail even on parity.

12. Per contra, Mr Thakre, learned Special Public Prosecutor appearing for the C.B.I. placing reliance on two confessional statements, made by accused No.11 Syed Akif and accused No.15 Abdul Samad read contents thereof so as to demonstrate deep involvement of the present applicant in commission of crime alleged against him. He has also relied upon the communications between the members of the organised crime syndicate and tried to impress upon me that the act of the present applicant is squarely covered by Section 2 (d) (i) of the M.C.O.C.Act. He further submits that constant telephonic talk and the

statements made by the co-accused persons make it is clear that the present applicant was in constant contact and in touch with the other members of the organised crime syndicate. That the persons with whom he was associating are the hard core members of the terrorist organisations who are trying to create insurgency in the country. He further tried to demonstrate from the material on record that "E-Mail I.D."of the applicant is still being used though the applicant is in custody. His E-mail is being used to pass on the messages to the various members of the organised crime syndicate. He further pointed out that some of the accused persons are absconding. He further placed reliance on the certificate issued by the Director of Forensic Science who has certified that the recorded speech is marked as Exh-Q5, Exh-Q6 and Exh-Q62 were that of the applicant.

13. Learned counsel for the C.B.I. further pointed out that the present applicant is a member of the "Ahl-e-Hadis", an organisation, which is banned by the Govt. of India. He also produced some literature before me from India's National Magazine published by "THE HINDU"; which reads as under:-

> "The LeT was set up by the Ahle-Hadis, doctrinally close to the Saudi

> Wahabis. They hate ritual and reject Sufism. With them, the texts yield only one meaning. They insist on substantial individual responsibility in interpreting the law, rejecting recognised Sunni schools, unlike the Deobandis."
>
> (Emphasis supplied)

14. Mr Thakre further brought to my notice the extract from the article written by one Wilson John captioned as "Terror factory back in business" published by "the Pioneer"; wherein, connection of "Ahle Hadis" is sought to be established with the terrorist organisation in the following words:-

> "Lashkar's Indian connections are no secret but are not known in depth. Ahl-e-Hadis is a Muslim charitable and religious organisation head quarter in Moradabad. It is one of Lashkar's front organisations in India. Another known affiliate is the newly emerging Muslim Defence Force in South India. Hadis had been involved in a series of bomb blasts in and around Delhi after the demolition of Babri Masjid. One of the most wanted Ahl-e- Hadis man in India is Abdul Karim alias Tunda who fled to Muzaffarabad after engineering bomb blasts in Delhi and Haryana, and took over as Deputy Commander of Lashkar's India operations."
>
> (Emphasis supplied)

15. Mr Thakre, also took me through another article of Wilson John published in the same magazine under the caption "Contours of a new terror matrix"

reads as under:-

"LeT's first forays into India began after the Babri Masjid demolition in December, 1992, recruiting its first set of terror soldiers, Jalees Ansari, Azzam Ghauri and Abdul Karim Tunda, etc. Operational bases were set up in Mumbai, Delhi and Hyderabad, exploiting the widespread rage among Muslims in the wake of the demolition. The group exploits two sets of local support to execute its operations - the ISI assets and its ideological association with Ahle-e-Hadis, an Islamic school of thought, which emerged in India following the downfall of the Mughal empire with the objective of restoring Islam to its prior glory and power.

"Hadis has an ideological affinity with Wahabis of Saudi Arabia and a close proximity to Deobandis. This historical perspective is important to understand LeT's potential in expanding its base and strength in India. LeT is a Ahl-e-Hadis group and, therefore, has been the beneficiary of Saudi Arabian largesse from its inception, charities, have been actively helping, particularly after the Gujarat riots in February 2002, LeT to recruit and expand its network in Andhra Pradesh, Uttar Pradesh, Gujarat, Maharashtra and Rajasthan."

"Another Hadis (in India Hadis and Deobandi work closely) group is Students Islamic Movement of India (SIMI), an organisation of Muslim students funded largely by foreign charities, which LeT has been using to carry out its operation outside Jammu & Kashmir."

(Emphasis supplied)

16. Mr Thakre,thus, tried to forcefully contend that looking to the activities and involvement of the applicant,who is admittedly a member of Ahle-e-Hadis, no bail can be granted in his favour.

17. Mr Thakre further pressed into service the provisions of Section 24 (4) of the M.C.O.C.Act, 1999 to contend that looking to the overwhelming evidence there are reasonable grounds for believing that the applicant is guilty and that looking to his deep association with the terrorist organisation, he is likely to commit offence while on bail. He thus submits that ample material is on record to show that the applicant is member of the organised crime syndicate. He, thus, prayed for rejection of prayer for bail.

CONSIDERATION :

18. Before considering rival submissions, it is necessary to turn to Section 21 (4) and (5) of the M.C.O.C.Act, 1999:-

> **21. Modified application of certain provisions of the Code.**
>
> (1) ....
>
> (2) ....

> (3) ....
>
> (4):- Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act, shall, if in custody, be released on bail or on his own bond, unless---
>
> > (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
> >
> > (b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
>
> (5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.
>
> (6) ....
>
> (7) ....

19. The M.C.O.C.Act is a special legislation. No person, accused of an offence punishable under this Act, if in custody, can be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application of such release and where the Public Prosecutor opposes the application, the Court has to get itself satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. Keeping the said provisions in

mind, one has to examine whether or not prima facie material is available on record to reach to the prima facie; conclusion that the applicant is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

20. Having examined the aforesaid legal position, it is not in dispute that there are confessional statements made by the co-accused Nos.11 and 15 implicating the present applicant-accused. It is no doubt true that they have retracted from their statements but the effect thereof can only be tested and decided during the course of trial as held by this Court in the case of **Intelligence Officer,D.R.I.Mumbai vs. Holia Mohammed Nisar C/o Suleman Holia & others reported in 1998 Bom CR (Cri)** (para 14). To what extent the retraction can be acted upon would be a matter of appreciation of evidence.

21. The confessional statements of accused Nos.11 and 15, who implicate the present applicant- accused, if proved, are sufficient to establish charge against the present applicant. The telephonic conversation, participation in the activities of "Ahl-e-Hadis" as a member of the banned organisation coupled with the evidence identifying his voice could be used to corroborate the statements of co-accused. At this

stage, prima facie, one has to conclude that there is hardly any reasonable ground for believing that the applicant is not guilty of the offences alleged against him. He being a member of the organised crime syndicate, prima facie, I do not think, it would be possible for him to keep himself away from the activities of the said organised crime syndicate and that too,as a devoted member of the banned organisation known as "Ahl-e-Hadis".

22. If the aforesaid evidence is proved or established in trial, then possibility of conviction cannot be ruled out. Apart from this, once the person is released on bail being a member of organised crime syndicate as is found in this case on the basis of prima facie material available on record, the possibility of the applicant- accused committing further offences cannot be ruled out. Therefore, it is difficult to conclude, prima facie, that the applicant is not likely to commit any offence while on bail. In this view of the matter, application for bail cannot be granted.

23. In the result, application is rejected for the reasons recorded herein together with the reasons recorded by the learned Special Judge, M.C.O.C., Mumbai in her order dated 3.2.2007 with which I concur

and affirm.

JUDGE